(15)

No. 84-1513

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

DANTE CARLO CIRAOLO,
Respondent.

On Writ of Certiorari to the California Court of Appeal, First Appellate District

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BRIEF OF AMICUS CURIAE THE WASHINGTON LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether police flying in aircraft at altitudes of at least 1,000 feet who observe unsheltered backyard fields and gardens appearing in the landscape below are engaged in searches of homes within the meaning of the Fourth Amendment to the Constitution.

2. Whether an unsheltered backyard plot, devoted to the cultivation of eight- to ten-foot cannabis plants for commercial sale, should be treated as an extension of the home within the meaning of the Fourth Amendment.

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INTERESTS OF AMICUS CURIAE

The Washington Legal Foundation ("WLF") is a non-profit public interest law center based in Washington, D.C., with over 80,000 members nationwide. WLF engages in litigation and administrative proceedings in matters affecting national legal policy and the basic rights of ordinary, law-abiding citizens. This brief is filed with the written consent of all parties, pursuant to Supreme Court Rule 36.1.

WLF devotes a substantial portion of its resources to supporting the cause of strong and effective law enforcement in cases involving criminal justice and related constitutional issues. The Foundation also maintains a "Drug Alert" Project designed to encourage and defend efforts to curb the alarming increase of illegal drug use in the United States, especially among America's youth. Among other activities, WLF provides legal assistance and counseling to parent-teacher groups, school boards and municipalities interested in curbing drug abuse. WLF also frequently participates in court cases involving the proper administration of justice as to drug issues.

The Foundation has frequently appeared before this Court as *amicus curiae* in cases dealing with criminal justice issues. *See, e.g., Barefoot v. Estelle*, 103 S. Ct. 3383 (1983); *United States v. Ptasynski*, 103 S. Ct. 2239 (1983); and *Eddings v. Oklahoma*, 455 U.S. 104 (1982). WLF has been especially active in litigation involving the proper scope of Fourth Amendment restraints on law enforcement. For example, WLF joined 25 State Attorneys General in submitting arguments to this Court in *Illinois v. Gates*, 454 U.S. 1140 (1983), calling for a good faith exception to the exclusionary rule.

Here, WLF seeks to advance the interests of its members by demonstrating the legal invalidity of the restraints placed on anti-narcotics law enforcement personnel by the California tribunal below. Nothing in the Constitution forbids state law enforcement personnel from making the same observations of a backyard field that could be made by an ordinary citizen without committing a trespass. In particular, WLF would urge the Court to recognize that the outdoor cultivation of illegal drugs—now one of the leading sources of income for the deadly illegal drug business—entails none of the legitimate privacy interests which alone command the Fourth Amendment's protection.

WLF's brief will contribute to the just disposition of this case by demonstrating that respondent's claim to "vertical" privacy for commercial cannabis cultivation bears no relationship to the genuine policies and purposes of the Fourth Amendment.

STATEMENT OF THE CASE

In the interest of brevity and judicial economy, the *amicus curiae* adopts the statement of the case set forth in the brief of petitioner, the State of California.

SUMMARY OF ARGUMENT

1. The court below erred in treating remote aerial observation of an unsheltered outdoor cannabis plot as a "search" of the "home" within the meaning of the Fourth Amendment. Airborne police do not need a warrant to observe the same features of the landscape that can be freely seen by thousands of airline passengers and aviators every day. To hold otherwise would impose anomalous and unwarranted handicaps on law enforcement personnel, forcing them to revert to 19th century detection methods in their efforts to combat modern, "hi-tech" drug operations. Absent low-altitude hovering or "buzzing" maneuvers, police aerial observation of unsheltered and conspicuous outdoor foliage simply does not implicate Fourth Amendment concerns.

2. The lower court misapplied the "reasonable expectation of privacy" formula of *Katz v. United States*. First, there was nothing to show that the defendant had even an *actual* expectation of privacy from *aerial* observation (as opposed to ground level observation) with respect to his cannabis crop. In any event, it could not have been a *reasonable* expectation; the volume and variety of contemporary air traffic is such that unsheltered outdoor lots are obviously subject to at least remote viewing by thousands of air passengers and aviators. And from the perspective of the airborne viewer, there is no

genuine distinction between land adjacent to a residence and other land. Further, even if there could be a reasonable privacy expectation as to a normal family backyard, such expectations are fatally undercut when the homeowner commits his backyard to commercial cannabis cultivation.

3. The Court of Appeal erred in its rigid, mechanical application of the curtilage exception to the "open fields" doctrine of *Oliver v. United States*. Defendant's backyard cannabis field is not properly treated as curtilage, because it was not "habitually devoted" to family purposes and private domestic pursuits. The illegal commercial cultivation of cannabis is hardly the kind of private domestic activity which the curtilage concept was devised to protect.

ARGUMENT

This case presents the question of whether police aerial observation of outdoor cannabis plots violates the Fourth Amendment whenever those plots are adjacent to a residence.

As long as such observations are made from aircraft flying at reasonable altitudes, and not otherwise "buzzing" or intruding upon the peace of the residence, no "search" is implicated under the Fourth Amendment. When a policeman makes an "open view" observation that any civilian could make just as easily by legally flying over in a Piper Cub or glider, he is not "searching" a home but simply looking over the landscape. Other courts considering the question have so held. *E.g.*, *United States v. Allen*, 675 F.2d 1373 (9th Cir. 1980); *Randall v. Florida*, 458 So.2d 822 (Fla. Dist. Ct. App. 1984); *State of Hawaii v. Stachler*, 570 P.2d 1323 (Sup. Ct. Haw. 1977).

Moreover, an unsheltered, outdoor cannabis plot is not protected by the Fourth Amendment even if it happens

to be located near a residence. Outdoor plots devoted to commercial crop cultivation have nothing at all to do with "those intimate activities that the Amendment is intended to shelter from government interference or surveillance." *Oliver v. United States*, 104 S. Ct. 1739, 1741 (1984). The plants grown in *this* backyard were not intended for Mother's Day bouquets or centerpieces for the family dinner table. They were a pure cash crop, grown for commercial sale. As such, the backyard in question has no claim on the special protections for family or personal privacy which the Fourth Amendment extends to the home.

I. POLICE MAY LOOK DOWN FROM AN AIRCRAFT UPON BACKYARD CROP FIELDS WITHOUT PERFORMING A "SEARCH" UNDER THE FOURTH AMENDMENT

In this case, the California Court of Appeal ruled that it was unconstitutional for a policeman to observe without a warrant what any private citizen could easily and legally see from the same vantage point: an unsheltered outdoor plot, visible from a remote aircraft with the unaided eye. Specifically, the court held that a policeman looking down at the earth's landscape, from a plane flying at an altitude of over 1,000 feet, was somehow engaged in an unreasonable search of a house, in violation of the Fourth Amendment.

The decision is manifestly wrong on all counts. The policeman was not engaged in a "search," but in a remote, preliminary observation. *See Randall v. Florida*, *supra*, 458 So.2d at 824. He was not peering into a house, or rummaging through drawers and files, but merely *noticing* a conspicuous outdoor marijuana field from an overflying fixed-wing airplane.[1] Indeed, the of-

[1] Whatever contrary rule there may be for "hovering" helicopter surveillance, the cases are clear in holding that observations made from overflying fixed-wing airplanes do not violate the Fourth

ficer did not even use binoculars or a telephoto lens to obtain an amplified view of the landscape below—even though the use of such aids in aerial surveillance has been upheld by the courts in similar cases. *E.g., United States v. Allen, supra*, 675 F.2d at 1380-81 (intensive helicopter surveillance of ranch, using telephoto lens, upheld). In short, the officer's conduct was a reasonable and unobtrusive way to establish probable cause for a warrant authorizing an actual search of the premises.

The proper analysis of such remote, non-harassing forms of aerial surveillance was set forth by the court in *Randall v. State of Fl ida, supra*, 458 So.2d at 824. There, the police likewise executed an aerial overpass above a fenced-in, backyard marijuana patch. In *Randall*, moreover, the observation was made from a helicopter, which the courts have recognized as having far greater potential for intrusive spying than fixed-wing airplanes. Nevertheless, the Court ruled that ". . . the officers' aerial observation of appellant's fenced backyard was a legally permissible preintrusion 'open view'."

The *Randall* decision further demonstrates why the dweller's reasonable expectation of privacy from *ground-level* observation— as here, manifested by his erection of a surrounding fence— nonetheless "did not protect his backyard from *aerial* observation." [emphasis added] As the Court explained (458 So.2d at 825):

> The investigating officers unquestionably made their observation from a place where they had a legal right to be. They did not hover over appellant's property or survey it from an unreasonably low altitude. Nor

Amendment. *E.g., Dean v. Superior Court of Nevada County*, 35 Cal. App. 3d 112, 110 Cal. Rptr. 585 (3d Dist. 1973) (300 ft. airplane surveillance upheld); *United States v. DeBacker*, 493 F. Supp. 1078, 56 ALR Fed. 765 (W.D. Mich. 1980) (airplane which made pass to 50 feet of field did not violate Constitution); *People v. Lashmett*, 71 Ill. App. 3d 429, 27 Ill. Dec. 657, 389 N.E.2d 888 (1979), *cert. denied*, 444 U.S. 1081 (1980) (airplane surveillance at 2,400 feet upheld).

> did they make repeated flights over the property, subjecting it to daily scrutiny over a prolonged period until they finally discovered contraband. Furthermore, the officers made their initial observation of the contraband with their unaided vision, without resort to high-powered lenses or other telescopic devices.

The Florida court's approach in *Randall*—an approach previously followed by the Supreme Court of Hawaii in *State v. Stachler, supra*, 570 P.2d at 1328—is sensible, legally correct, and directly on point here. The remote aerial observation made in this case was likewise a "preintrusion open view", which simply does not implicate Fourth Amendment constraints.

Ignoring these persuasive precedents, the decision of the California court requires the police to impose on themselves a bizarre and unnatural handicap in their efforts to detect and apprehend illegal drug traffic. It effectively deprives police of a primary method of detecting sources of the drug trade—*i.e.*, thorough aerial surveillance over suspect areas—and gives the drug traders an enormous advantage which they are certain to exploit. In effect, the decision creates a "safe harbor" for illegal drug operations in any field or plot which happens to be adjacent to any building that someone calls a "residence." And it does so on the basis of palpably false assumptions regarding the "rights" associated with outdoor drug cultivation.

The skies of America are crowded with aircraft of all varieties. On any given day, some *930,000* Americans are aloft in aircraft flying in U.S. navigable airspace.[2] Whether flying private aircraft or riding as commercial passengers, these citizens are completely free to observe (and to photograph) whatever appears in the landscape

[2] Based on statistics provided by the Air Traffic Conference of America, showing that about 343,000,000 passengers were transported in U.S. airspace in 1984.

below. Every day, hundreds of thousands of passengers look down from aircraft portholes directly into the backyards of literally millions of American households. When these indisputable facts are considered, anyone who entertains the notion that he can expect privacy from remote aerial observation for an unsheltered outdoor lot is engaged in pure self-delusion.

In this regard, it is important to distinguish the facts of this case from the genuine search and seizure situation. In the situation contemplated by the Framers, the power of the State is employed by the police to *force* or *insinuate* themselves into a private place to which they would otherwise be denied entry. The police are thus able to achieve a vantage point within the home that could not be achieved by an uninvited stranger without breaking the law. But the ability to observe an unsheltered backyard from an aircraft is in no way dependent upon the ability to invoke the power and resources of the State. It can be accomplished without breaking the law by any citizen who has access to some form of aircraft.

In this case, then, the alleged violation of Fourth Amendment privacy interests has nothing to do with that unique power of the States which the Amendment was framed to restrain.

That which lies in plain view to any airline passenger on a legal overflight cannot be made invisible to airborne police officers. The Fourth Amendment restrictions on intrusive government searching do not purport to deprive police of the use of technologies available to everyone else or of the basic perceptive capacities available to a passing citizen. And the police are not required to avert their eyes from conspicuous, outdoor evidence of criminal activity. Yet that is *precisely* the effect of the Court of Appeal's decision in actual practice. This Court should decline to embrace such a distortion of logic and plain sense as part of our Fourth Amendment jurisprudence.

II. RESPONDENT'S CANNABIS PLOT FAILS TO QUALIFY FOR FOURTH AMENDMENT PROTECTION UNDER *KATZ v. UNITED STATES*

In *Katz v. United States*, 389 U.S. 347 (1967), this Court established a two-part test for determining whether a Fourth Amendment "search" has actually occurred in a given case: (1) The person claiming protection must have an actual or subjective expectation of privacy in the area affected; and (2) that expectation must be one that society would deem reasonable.

In applying this test, it is important to recall that the *Katz* decision "did not sever Fourth Amendment doctrine from the Amendment's language," *Oliver v. United States*, *supra*, 104 S. Ct. at 1740 n.6. The Amendment speaks quite specifically of the "right of the people to be secure in their persons, *houses*, papers, and effects, against unreasonable *searches* and seizures" [emphasis added). This case, on the other hand, involves a policeman observing a backyard field of towering, bright-green plants from a remote airplane flying at an altitude of at least 1,000 feet. The glaring disparity between the facts of this case and the type of search evoked by the plain language of the Fourth Amendment places the respondent's extraordinary claim of privacy expectations in proper perspective.

Under the *Katz* test, the person's expectation of privacy must extend not only to the *area* or parcel in question, but also to the particular *type of intrusion* which occurred. See *Dow Chemical v. United States*, 749 F.2d 307 (6th Cir. 1984) *cert. granted*, 53 U.S.L.W. 3869 (U.S. June 11, 1985) (No. 84-1259).

While respondent may well have entertained certain limited expectations of privacy regarding his backyard cannabis plot (i.e., as evidenced by the surrounding fence), there is no indication that they extended to the possibility of remote observation by aerial surveillance. The fences surrounding the plot reflect a privacy interest

confined to *ground level* intrusions. *Id.*, 749 F.2d at 312. To paraphrase the Sixth Circuit in the *Dow* case, respondent "did not take any precautions against aerial intrusions, even though [his lot] was near an airport," *id.* at 312.[3] Thus, just as in the *Dow* case, the record here does not even support the proposition that respondent *actually* expected privacy from remote aerial observation for his cannabis field.

Even if he had, respondent's expectations would have been patently unreasonable. Just as the Supreme Court of Hawaii ruled in *State v. Stachler, supra,* 570 P.2d at 1328: "[W]e think that defendant . . . could have no reasonable expectation of privacy as to observation, from a reasonable height, of his open marijuana patch."

The Santa Clara vicinity where defendant resided is accustomed to regular aircraft overflights associated with the nearby San Jose city airport (CT 11-12, 15-17). This factor obviously undercuts any expectations of immunity from high altitude aerial observation. Thus, in *United States v. Allen, supra,* 675 F.2d at 1381, the court stressed that there is no valid expectation of vertical privacy in areas subject to regular overflight activity.

Commercial air traffic aside, the skies of a typical suburban California community are frequently populated by private Cessnas, traffic-monitoring helicopters, and even the occasional glider. Indeed, aerial surveillance for illegal drug cultivation has *itself* been a sufficiently widespread and publicized phenomenon in California to lessen expectations regarding outdoor privacy from aerial observation.

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[3] It would not be necessary to erect an "opaque bubble", see *United States v. Allen, supra,* 675 F.2d at 1380, to manifest such precautions. Awnings, canopies, and tall, leafy trees are commonly used to provide enhanced backyard privacy. The fact that one cannot grow cannabis under an awning or canopy hardly serves to rebut the point that such outdoor cultivation has only the most limited privacy expectations, if any. Outdoor commercial crop cultivation is simply not a private activity.

In contemporary America, therefore, no one can reasonably assume that an unobstructed backyard landscape is immune from the glance of those who fly overhead. And only a brief airborne glance (as opposed to a studious examination) is all that is needed for a knowledgeable narcotics officer to verify the existence of an outdoor cannabis plot.

It is of considerable significance that only the most remote and unobtrusive form of observation is necessary to detect the existence of an outdoor cannabis plot. The relative ease with which exposed cannabis fields can be identified from the air makes intrusive tactics (such as lengthy hovering by helicopter) unnecessary. Yet the respondent's theory would seem to hold that the efficacy of the observation in detecting illicit activity automatically renders it unconstitutional, no matter how remote the vantage point. The problem with that argument is that it confuses a citizen's right to be free from unreasonable intrusion with a criminal's desire to be free from effective detection.

The decision below propagates that very fallacy by losing sight of the Fourth Amendment's genuine objectives and legitimate scope. As recently stated in *Dow Chemical v. United States, supra,* 749 F.2d at 312, the proper test of the Amendment's applicability

> . . . focuses on whether the human relationships that normally exist at the place inspected are based on intimacy, confidentiality, trust or solitude and hence give rise to a "reasonable" expectation of privacy.

Whatever human relationships (if any) may be said to flourish in a commercial marijuana field, they have nothing to do with intimacy or trust. In fact, all that goes on there is the pursuit of profit through the cultivation of an illegal crop.

If the backyard crop observed by the Santa Clara police had been pumpkins instead of cannabis, the home-

owner's claim that no one should be able to observe his pumpkin patch from the sky would have been met with derisive laughter.[4] The mere fact that the crop involved here happens to be an illegal drug should hardly give the owner's privacy claim any greater weight.

III. RESPONDENT'S CANNABIS PLOT IS NOT GENUINE "CURTILAGE" AND DOES NOT FALL WITHIN THE ZONE OF FOURTH AMENDMENT PROTECTION RESERVED FOR FAMILY PURPOSES AND DOMESTIC ACTIVITIES

The Court of Appeals erred further by misapplying the so-called "curtilage" exception to the "open fields" doctrine of *Oliver v. United States*, *supra*. The constitutionality of the aerial observation was made to turn on the abstruse question of whether the plot in question could meet the technical definition of curtilage. But the dispositive consideration is not whether the cannabis field fell within some anachronistic definition of the curtilage; the true question is whether the plot was a genuine extension of the home, devoted to intimate domestic activities.

The curtilage concept has its origins in ancient common law. The term originally signified the land enclosed together with the castle and its outhouses within high stone walls, where the old English barons sometimes held court in the open air. The term was later corrupted into "court yard." *Coddington v. Hudson Covnty Dry Dock & Wet Dock Co.*, 31 N.J.L. (2 Vroom) 477, 484 (1863). Curtilage eventually came to signify the lands and other buildings enclosed within the fence which generally surrounded dwelling houses in rural England. *Booker v.*

[4] As the Hawaii Supreme Court aptly observed in *State v. Stachler*, *supra*, 570 P.2d at 1328:

> If defendant had been engaged in growing taro, sweet potato or banana, surely he would not have a reasonable expectation of privacy as to his crop from aerial observation.

Jarrett, 78 S.E. 754, 755, 72 W.Va. 606 (1913); *People v. Taylor*, 2 Mich. 250, 251 (1851).

In American law, curtilage has generally been defined as that parcel of land immediately adjoining the residence and habitually used in connection with it for "family purposes" and "domestic employments." *See, e.g., United States v. Arms*, 270 F. Supp. 126, 130 (E.D. Tenn., 1967); *De Mouy v. Jepson*, 51 So.2d 506, 510, 255 Ala. 337 (1951); *Jones v. Commonwealth*, 38 S.W.2d 971, 973, 239 Ky. 110 (1931). Its most significant function as a legal classification was to define that portion of a homeowner's land within which he was not obligated to retreat in order to avoid killing an intruder. *Craven v. State*, 111 So. 767, 771, 22 Ala. App. 39 (1927).

Significantly, the courts have denied protection to areas otherwise meeting the physical definition of curtilage where they were not "used for domestic purposes in the conduct of family affairs." *E.g., Littke v. State*, 258 P.2d 211, 214, 97 Okl. Cr. 78 (Crim. Ct. App. 1953).

Some courts have openly criticized the adoption of this anachronistic and anomalous term by American law. *E.g., People v. Taylor*, *supra*, 2 Mich. at 251. Designed to reflect the usages of rural pre-industrial England, it bears little relationship to the distinct privacy and property concerns raised by such modern phenomena as aerial surveillance.

This notwithstanding, the Supreme Court did acknowledge the existence of the curtilage concept when it reaffirmed the open fields doctrine in *Oliver*. It bears emphasis, however, that the Court explicitly refrained from holding that curtilage is entitled to the same degree of Fourth Amendment protection as the home itself. 104 S. Ct. at 1742 n.11. Rather, the curtilage concept was invoked merely to demonstrate that the open fields doctrine does not obliterate all out-of-door enclaves for legitimately private activity.

Quoting from *Boyd v. United States*, 116 U.S. 616, 630 (1886), the Court described the curtilage as "the area to which extends *the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'*" 104 S. Ct. at 1742. [emphasis added] The Court also emphasized that the scope of the curtilage doctrine is defined

> . . . by reference to the factors that determine whether an individual reasonably may expect that an area adjacent to the home will remain private. [104 S. Ct. at 1742]

The pertinent point emphasized in *Oliver* is that only areas devoted to *private, domestic activities* may be treated as extensions of the home under the curtilage exception to the open fields doctrine. The outdoor cultivation of tree-tall,[5] illegal drug plants hardly fits that prescription.

In the instant case, the court ignored the pivotal factors stressed in *Oliver* in favor of a rigid application of the purely physical characteristics of the curtilage (Cert. Pet., App. A, pp. 10-11; 17). Instead of considering whether land used to grow an illegal cannabis crop was validly associated with "intimate family activities," *deserving* of privacy, the court merely noted that it was located in a back yard and surrounded by fences. (*Id.* at 17).

As made clear by the Court in *United States v. Van Dyke*, 643 F.2d 992, 994 (4th Cir. 1981), holding that a given plot of land lies within the strictly physical definition of the curtilage only begins the Fourth Amendment inquiry. The key question relates to "its use and enjoyment as an adjunct to the *domestic* economy of the family," *id.*, and whether there is a legitimate and genuine expectation of privacy respecting the particular land in

[5] Cannabis plants commonly grow to between fifteen and twenty feet in height. *See, e.g., Dean v. Superior Court of Nevada County, supra.*

question or the objects within it. While a backyard containing 100-foot pine trees (or a 100-foot radio antenna) may squarely conform to the definition of curtilage, no one would seriously contend that the conspicuous objects towering above the yard are protected from police scrutiny by the Fourth Amendment. The same reasoning applies to the cannabis plants at issue here.

A cannabis field is easily recognizable as such from well over 1,000 feet in the air, by its distinctive color and plant configuration (Cert. Pet. pp 5-6; CT 12-16, 38). The plants commonly tower from ten to twenty feet in height, and higher. In all, it is a highly conspicuous commercial crop, the cultivation of which is plainly incompatible with accepted notions of private family activity.

Moreover, the purely commercial objectives of cannabis cultivation are themselves sufficient to disqualify these marijuana gardens from protection as part of the domestic curtilage. As the Court stressed in the *Dow Chemical* case, *supra*, 749 F.2d at 314, "After a diligent search we have found no cases applying the curtilage concept to the commercial setting." And the "backyard" at issue here had clearly been converted to a commercial setting.

While the court below failed to examine the cannabis field in relation to the proper legal criteria, the Supreme Court's analysis in *Oliver* did apply those criteria in language that is directly pertinent here (104 S. Ct. at 1741):

> In contrast, open fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or surveillance. *There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, that occur in open fields.* Moreover, as a practical matter these lands usually are accessible to the public and the police in ways that a home, an office or commercial structure would not be. [emphasis added]

The above statement from *Oliver* holds true in *every respect* in this case as well. Outdoor marijuana fields obviously do not provide the setting for "intimate" family activities. Conversely, the backyard lot involved here was indeed used for "the cultivation of crops"—and illegal crops at that! Further, there is surely no "societal interest" in providing a zone of privacy for cannabis cultivation. And finally, the area in question here was also "accessible" to aerial observation by the general public as a consequence of its proximity to a nearby airport.

These are the critical factors established by the Supreme Court for determining whether a particular parcel of land is within the zone of Fourth Amendment protection. Because outdoor plots devoted to cash-crop cultivation fall short on each one of those factors, the remote aerial observation of such plots raises no Fourth Amendment problem whatsoever.

CONCLUSION

To hold that remote aerial observation of outdoor commercial cannabis plots constitutes a Fourth Amendment "search" is to distort the meaning of the Constitution beyond all recognition. Moreover, such a holding would result in anomalous and wholly unwarranted restrictions on police programs to detect illegal drug operations. The decision of the California Court of Appeal should be reversed.

Respectfully submitted,

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